

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001

January 5, 2004

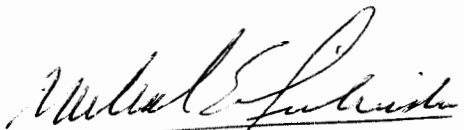
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 2003-294-M
Petitioner	:	A. C. No. 41-01241-05533
v.	:	
	:	
VULCAN CONSTRUCTION	:	
MATERIALS, L.P.,	:	1604 Quarry
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Zielinski

This case is before me on a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). The parties have negotiated an agreed resolution of the petition and, by motion, seek approval of the settlement agreement and dismissal of the case. The Secretary has agreed to modify the citation at issue and it is proposed that the penalty be reduced from \$2,168.00 to \$1,734.00. I have considered the representations and evidence submitted and conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is **GRANTED**, and it is **ORDERED** that Respondent pay a penalty of \$1,734.00 within 30 days.



Michael E. Zielinski
Administrative Law Judge

Distribution:

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/mh

UNITED STATES OF AMERICA

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ELAINE L. CHAO, Secretary of Labor)	CIVIL PENALTY PROCEEDING
United States Department of Labor)	
)	Docket No. CENT 2003-294-M
Petitioner,)	
)	Citation No. 06220436
v.)	
)	
VULCAN CONSTRUCTION MATERIALS,)	
L.P.,)	
)	Mine I.D. No. 41-01241
)	
Respondent.)	Mine: 1604 Quarry

STIPULATION AND MOTION TO APPROVE SETTLEMENT AGREEMENT

The parties hereby agree and stipulate as follows:

1. Respondent, as more specifically set forth in the Exhibit A attached to Petitioner's Petition, was issued a citation pursuant to the Federal Mine Safety and Health Act of 1977.
2. The Mine Safety and Health Administration issued proposed assessment for the violation contained in Docket No. CENT 2003-294-M. This assessment took into account those factors required to be considered by subsection 110(i) of the Act.
3. Respondent contested the citation referenced in paragraph (2).
4. Citation No. 06220436 was issued for a significant and substantial violation of 30 CFR 56.14100(b), which requires that defects on any equipment, machinery, and tools that affect safety be corrected in a timely manner so to prevent the creation of a hazard to persons. The inspector assessed the negligence as low, the probability of an occurrence as occurred, and the gravity of injury as fatal. A penalty of \$2,168.00 was assessed for this violation.

5. The parties have agreed to change the violation for Citation No. 06220436 from a violation of 30 CFR 56.14100(b) to a violation of 30 CFR 56.9101, which requires operators of self-propelled mobile equipment to maintain control of the equipment while it is in motion. The parties believe this regulation more accurately reflects the facts as known. Moreover, the Secretary amends and changes the language of Citation No. 06220436 in the Condition or Practice section to read as follows: "On August 24, 2002, the operator of the Caterpillar 910 loader failed to maintain control of the equipment while in motion on a haul road with a 16 percent grade. Failure to maintain control of the equipment resulted in fatal injuries to the equipment operator."

6. The parties believe that the proposed penalty for Citation No. 06220436 should be amended to \$1,734.00 based on the operator's good faith, low degree of negligence, and the surrounding facts. The settlement for this citation reflects a reduction in proposed penalties by approximately twenty percent (20%) based on the modification set out above.

7. Respondent has agreed to pay the amended, total proposed penalties in the amount of \$1,734.00 and hereby withdraws its Notice of Contest. Respondent shall make its certified check payable to "The U.S. Department of Labor - MSHA."

8. Respondent takes the position that for purposes of actions other than actions or proceedings under the Federal Mine Safety and Health Act, nothing contained herein should be deemed an admission by Respondent that Respondent violated the Mine Act or its regulations or standards.

9. Nothing in this Settlement Agreement precludes Respondent from petitioning the Office of the Assistant Secretary of Labor for Mine Safety and Health to make appropriate adjustments to the official accident investigation record, consistent with the terms of this agreement.

10. Respondent states that Respondent will comply with the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.*

11. Respondent certifies that a copy of any documents or pleadings required by the Federal Mine Safety and Health Review Commission Rules to be posted have been posted.

12. Payment of the total proposed assessments would not impair Respondent's ability to continue in business.

13. Each party agrees to bear its own attorney's fees, costs and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

14. It is the belief and conviction of the parties that approval of this settlement is in the public interest and will further the intent and purposes of this Act.

WHEREFORE, the parties jointly move the Commission to approve the settlement agreement and to dismiss this proceeding.

Respectfully Submitted,

VULCAN CONSTRUCTION MATERIALS,
L.P.

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